

111TH CONGRESS
2D SESSION

S. 3315

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program.

IN THE SENATE OF THE UNITED STATES

MAY 5, 2010

Ms. COLLINS (for herself and Mr. FEINGOLD) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend title XVIII of the Social Security Act to protect Medicare beneficiaries' access to home health services under the Medicare program.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Home Health Care
5 Access Protection Act of 2010”.

6 **SEC. 2. PROTECTING ACCESS TO MEDICARE HOME HEALTH**
7 **SERVICES.**

8 Section 1895(b)(3)(B) of the Social Security Act (42
9 U.S.C. 1395fff(b)(3)(B)), as amended by section 3401(e)

1 of the Patient Protection and Affordable Care Act (Public
2 Law 111–148), is amended—

3 (1) in clause (iv), by striking “Insofar as” and
4 inserting “Subject to clause (vii), insofar as”; and

5 (2) by adding at the end the following new
6 clause:

7 “(vii) SPECIAL RULES FOR ADJUST-
8 MENT FOR CASE MIX CHANGES FOR 2011
9 AND SUBSEQUENT YEARS.—

10 “(I) IN GENERAL.—For 2011
11 and each subsequent year, subject to
12 subclause (IV), any adjustment under
13 clause (iv) shall only be made using
14 standards established by the Secretary
15 consistent with the processes de-
16 scribed in subclause (II) and taking
17 into account the considerations de-
18 scribed in subclause (III).

19 “(II) PROCESSES AND CRITERIA
20 FOR EVALUATING CHANGES IN CASE
21 MIX.—For purposes of subclause (I),
22 the processes described in this sub-
23 clause are the following:

24 “(aa) The Secretary shall
25 convene a Technical Advisory

1 Group to advise the Secretary
2 concerning the establishment of
3 standards under subclause (I) in
4 order to distinguish between real
5 changes in case mix and changes
6 in coding or classification of dif-
7 ferent units of services that do
8 not reflect real changes in case
9 mix. The Technical Advisory
10 Group shall be composed of
11 stakeholders, including an equal
12 number of individuals and orga-
13 nizations representing the inter-
14 ests of Medicare beneficiaries, the
15 National Association for Home
16 Care and Hospice, the Visiting
17 Nurse Associations of America,
18 health care academia, and health
19 care professionals. Members shall
20 not have an existing contractual
21 relationship with the Secretary at
22 the time of their appointment to
23 the Technical Advisory Group.
24 The Secretary shall provide the
25 Technical Advisory Group an op-

1 opportunity to review and comment
2 on any proposed rulemaking or
3 final determination of the Sec-
4 retary with respect to such stand-
5 ards prior to the issuance of the
6 proposed rulemaking or making
7 of the final determination.

8 “(bb) If the Secretary en-
9 engages an outside contractor to
10 participate in the evaluation of
11 case mix changes described in
12 item (aa), the Secretary shall
13 only utilize an outside contractor
14 that has not previously partici-
15 pated in the design and establish-
16 ment of the case mix adjustment
17 factors under paragraph (4)(B).

18 “(cc) If the Secretary deter-
19 mines that any increase in case
20 mix relates to changes in the vol-
21 ume or nature of home health
22 services provided, the Secretary
23 shall evaluate that increase
24 through the actual review of
25 claims and services and shall not

1 use any proxy or surrogate for
2 determining whether the change
3 in volume or nature of services is
4 reasonable and necessary.

5 “(dd) The Secretary shall
6 establish such standards by regu-
7 lation.

8 “(ee) The Secretary shall
9 make available to the public all
10 data, reports, and supporting
11 materials, including any com-
12 ments by the Technical Advisory
13 Group under item (aa), regarding
14 the establishment of such stand-
15 ards at the time of the publica-
16 tion of the notice of the proposed
17 regulation.

18 “(III) CONSIDERATIONS.—For
19 purposes of subclause (I), the consid-
20 erations described in this subclause
21 are the following:

22 “(aa) The impact of changes
23 in the program under this title
24 that may affect the characteris-

1 tics of individuals receiving home
2 health services.

3 “(bb) The impact of changes
4 in the provision of home health
5 services by providers of services
6 and suppliers other than home
7 health agencies.

8 “(cc) Distinctions in the
9 characteristics of individuals ini-
10 tiating home health services from
11 community and institutional care
12 settings.

13 “(dd) Whether any changes
14 in coding resulted in a change in
15 aggregate payments under this
16 subsection during the fiscal year
17 or year and disregarding changes
18 in coding that did not result in
19 such a change in aggregate pay-
20 ments.

21 “(ee) Any other factors de-
22 termined appropriate by the Sec-
23 retary, in consultation with the
24 Technical Advisory Group under
25 subclause (II)(aa).

1 “(IV) EXCEPTION FOR CERTAIN
2 ADJUSTMENTS FOR 2011.—This clause
3 shall not apply to any adjustment
4 under clause (iv) that is scheduled for
5 2011 as of January 1, 2010.”.

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